

(SPACE BELOW FOR FILING STAMP ONLY)

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Attorneys for Defendant
Setton Pistachio of Terra Bella, Inc.

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

JUSTIN HESTER, individually, and on behalf
of other aggrieved employees pursuant to the
California Private Attorneys General Act

Plaintiff,

v.

SETTON PISTACHIO OF TERRA BELLA,
INC., a California corporation; and DOES 1
through 100, inclusive,

Defendants.

Case No.

[Tulare County Sup. Ct. Case No.
VCU287299]

**NOTICE OF REMOVAL TO FEDERAL
COURT BY DEFENDANT SETTON
PISTACHIO OF TERRA BELLA, INC.**

**TO THE CLERK OF THE FEDERAL DISTRICT COURT FOR THE EASTERN
DISTRICT OF CALIFORNIA, PLEASE TAKE NOTICE** that Defendant SETTON
PISTACHIO OF TERRA BELLA, INC. ("Setton"), a California corporation, hereby removes the
above-captioned case from the Superior Court in the State of California for the County of Tulare
(Case No. VCU287299) to this Court, the United States District Court for the Eastern District of
California. The removal is based on 28 U.S.C. section 1332(d) (the Class Action Fairness Act or
"CAFA"), 28 U.S.C. section 1331 (federal question jurisdiction), 28 U.S.C. section 1441 et seq., and

Article III, Section 2 of United States Constitution. This Notice of Removal is supported by the Declarations of Lee Cohen ("Cohen Decl.") and Kevin B. Piercy ("Piercy Decl."), and the supporting papers and exhibits filed herewith.

I. SUMMARY OF PLEADINGS FILED IN THE STATE ACTION

On May 18, 2021, Plaintiff Justin Hester, individually, and on behalf of other aggrieved employees pursuant to the California Private Attorneys General Act, commenced the above-captioned state civil action by filing a Complaint in the Superior Court of the State of California for the County of Tulare with Case No. 287299 (the "State Action"). Setton demurred to Plaintiff's Complaint, which was granted in part and denied in part. Thereafter, Plaintiff filed a First Amended Complaint on November 12, 2021, pursuant to the Order on Demurrer.

Plaintiff's State Action alleges a Private Attorneys General Act ("PAGA") claim but also contains language equivalent to a class action claim whereby Plaintiff seeks to act as an aggrieved employee representative on behalf of other aggrieved employees for penalties for meal and rest break violations, failure to pay minimum wages, failure to reimburse expenses, and further alleges a uniform policy and systematic scheme of wage abuse. Further, Plaintiff's claims affect over 100 employees, and thus, raise concerns of manageability of the claims. Plaintiff also requests a jury trial, which is only available for a class action. Plaintiff also seeks penalties for unnamed aggrieved employees who are entitled to a pro rata property interest of 25% of the penalties, which due process requires notice and opportunity to be heard under Rule 23 governing class actions. Also, just like class actions, the State Action was deemed complex by the state court.

Setton filed its Answer to the First Amended Complaint in the State Action on December 17, 2021. Setton now removes the State Action to this Court. True and correct copies of all process, pleadings, and orders filed in the State Action are attached to this Notice as **Exhibit A**.

On April 18, 2022, for the first time, Plaintiff's counsel set forth, in writing, a summary of Plaintiff's damage calculations to support its settlement demand, which totaled over the \$5,000,000 threshold amount required under CAFA.¹

¹ The disclosure of this amount is limited only to establish that this case qualifies for CAFA jurisdiction and is not to be construed as an admission of any fact or concession as to any allegations made by any party.

1 **II. STATEMENT OF VENUE AND INTRADISTRICT ASSIGNMENT**

2 Venue is proper in the United States District Court for the Eastern District of California
3 because Plaintiff filed his Complaint in the Superior Court of California for the County of Tulare
4 and alleges the acts upon which his claims are based arose in Tulare County. 28 U.S.C. §§ 84(b)
5 and 1391(b); *see also* First Amended Complaint, p. 1, ¶ 4. This case, with the State Action arising
6 from the County of Tulare, shall be assigned to the Fresno, Bakersfield, or Yosemite National Park
7 Division pursuant to Local Rule 120(d).

8 **III. THE COURT HAS ORIGINAL JURISDICTION BASED ON THE CLASS**
9 **ACTION FAIRNESS ACT (“CAFA”)**

10 Under CAFA, a federal court has original jurisdiction over civil matters in which: (1) any
11 member of the putative class is a citizen of a state different from that of any defendant; (2) the
12 aggregate number of putative class members is 100 or greater; and (3) the aggregate amount in
13 controversy exceeds the sum or value of \$5 million (exclusive of interest and costs). 28 U.S.C. §
14 1332(d). A defendant has the burden of establishing removal jurisdiction under CAFA. *See Abrego*
15 *Abrego v. Dow Chem. Co.*, 443 F.3d 676, 685 (9th Cir. 2006).

16 **A. At Least One Member of the Putative Class Is a Citizen of a Different State**
17 **Than Any Defendant**

18 Setton is and has been a registered California corporation whose laws it is organized under
19 since the filing of Plaintiff’s state court action, up to, and will continue through, the filing of the
20 Notice of Removal to Federal Court. *See* Cohen Decl., p. 2 ¶ 3. Setton is headquartered in Terra
21 Bella, California. *Id.* at p. 2 ¶ 4. Under 28 U.S.C. section 1332(c)(1), “a corporation shall be deemed
22 to be a citizen of any State and foreign state by which it has been incorporated and the State or
23 foreign state where it has its principal place of business” Furthermore, based upon a recent
24 review of Setton’s business records at least one of Setton’s workers is not a citizen of California and
25 is a citizen of a foreign country. *See* Cohen Decl., p. 2 ¶ 6.

26 Setton is the only named defendant in the State Action other than unknown Doe defendants.
27 As to those unnamed defendants, Defendant is without information sufficient to form a belief as to
28 the identities of the putative defendants titled “Does 1 through 100.” However, under CAFA, this

1 action “may be removed by any defendant without the consent of all defendants.” 28 U.S.C. §
 2 1453(b). Moreover, unknown defendants are not otherwise required to consent to or join in a notice
 3 of removal. *See Emrich v. Touche Ross & Co.*, 846 F.2d 1190, 1193 n. 1 (9th Cir. 1988).

4 **B. The Class Contains More Than 100 Members**

5 Based upon Plaintiff’s allegations in his First Amended Complaint, the date of the initial
 6 Complaint was filed, and the fact that Setton employees more than 100 employees every year, the
 7 class consists of more than 100 members. *See* Cohen Decl., p. 2, ¶ 4; *see also* Plaintiff’s First
 8 Amended Complaint, p. 4, ¶ 20 (alleging that Plaintiff worked “from approximately September 2018
 9 to approximately March 2020 . . .”). Thus, it is undisputed that the estimated class size is more
 10 than the requisite 100 members.

11 **C. The Amount In Controversy Exceeds \$5,000,000**

12 Setton has the burden of producing evidence that it is “more likely than not” that the
 13 jurisdictional threshold is in controversy. *See Sanchez v. Monumental Life Ins.*, 95 F.3d 856, 860
 14 (9th Cir. 1996). “[That] burden is not ‘daunting,’ as courts recognize that under this standard, a
 15 removing defendant is *not* obligated to ‘research, state, and prove the plaintiff’s claims for
 16 damages.’” *Muniz v. Pilot Travel Centers LLC*, 2007 WL 1302504 (E.D. Cal. 2007) (quoting
 17 *McCraw v. Lyons*, 863 F. Supp. 430, 434 (W.D. Ky. 1994)). “The ultimate inquiry is what amount
 18 is put ‘in controversy’ by the plaintiff’s complaint, not what a defendant will actually owe.” *Korn*
 19 *v. Polo Ralph Lauren*, 536 F.Supp.2d 1199, 1205 (E.D. Cal. 2008). In measuring the amount in
 20 controversy, the Court must assume that the allegations of the complaint are true and that a jury will
 21 return a verdict for the plaintiff on all claims made in the complaint. *Id.* Where a statutory maximum
 22 is specified, courts may consider the maximum statutory penalty available in determining whether
 23 the jurisdictional amount in controversy requirement is met. *Id.* The Court also has discretion to
 24 accept “summary-judgment-type evidence to the amount in controversy at the time of removal.”
 25 *Valdez v. Allstate Ins. Co.*, 372 F.3d 1115, 1117 (9th Cir. 2004) (quoting *Singer v. State Farm Mut.*
 26 *Auto. Ins. Co.*, 116 F.3d 373, 377) (also holding that a judicial admission may establish the amount
 27 in controversy). However, “a defendant’s notice of removal need include only a plausible allegation
 28 that the amount in controversy exceeds the jurisdictional threshold; the notice need not contain

evidentiary submissions.” *Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547, 549 (2014).

Here, Plaintiff clearly believes that his claims in the First Amended Complaint are worth well over the \$5,000,000 threshold. At mediation, Setton’s counsel received from Plaintiff’s counsel a typed-out estimate of damages in document form, which stated an amount well over \$5,000,000. *See* Piercy Decl., p. 2, ¶ 3; *see also Cohn v. Petsmart, Inc.*, 281 F.3d 837, 840 (9th Cir. 2002) (“A settlement letter is relevant evidence of the amount in controversy if it appears to reflect a reasonable estimate of the plaintiff’s claim.”). This was the first time such a document was ever received by Setton or Setton’s counsel. *See* Cohen Decl., p. 2, ¶ 5; *see also* Piercy Decl., p. 2, ¶ 3.

IV. ALL PROCEDURAL REQUIREMENTS FOR REMOVAL HAVE BEEN SATISFIED

Pursuant to 28 U.S.C. section 1446, subsection (a), a true and correct copy of all of the process, pleadings, and orders from the State Action that have been served upon Plaintiff are being filed with this Notice of Removal. To date, the only process, pleadings, and orders on file in the State Action are Plaintiff’s initial Complaint, Order on Setton’s Demurrer to the initial Complaint, Order Deeming the Case Complex and Continuing the Trial Date, Plaintiff’s First Amended Complaint, and Setton’s Answer to the First Amended Complaint, copies of all of which are attached hereto as Exhibit A.

V. TIMELINESS OF REMOVAL

This Notice of Removal is timely. Under 28 U.S.C section 1453(b), “A class action may be removed to a district court of the United States in accordance with section 1446 (except that the 1-year limitation under section 1446(c)(1) shall not apply)” Under 28 U.S.C. section 1446(b)(3), “if the case stated by the initial pleading is not removable, a notice of removal may be filed within thirty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable.”

Setton received documentation in support of Plaintiff’s settlement demand at the mediation, which occurred on April 18, 2022, which was 30 days ago. *See* Piercy Decl., p. 2, ¶ 3. Thus,

Setton's removal is timely.

VI. NOTICE TO PLAINTIFF AND STATE COURT

As required by 28 U.S.C. sections 1446(b) and 1446(d), Setton will provide Plaintiff, through his counsel of record, with written notice of this removal, and will file a copy of this Notice of Removal with the Superior Court of California for the County of Tulare.

VII. CONCLUSION

WHEREFORE, Setton hereby removes the State Action to this Court. In the event this Court has a question regarding the propriety of this Notice of Removal, Setton requests that the Court issues an Order to Show Cause so that Setton may have an opportunity to brief the basis more fully for this removal, and/or provide this Court with any additional support it may require.

Dated: May 18, 2022

RAIMONDO | MILLER, ALC

By: /s/ James D. Miller
Anthony Raimondo
James D. Miller
Kevin B. Piercy
Attorneys for Defendant
Setton Pistachio of Terra Bella, Inc.

EXHIBIT A

Process and Pleadings

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CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Edwin Aiwanian (State Bar No. 232943) Lawyers for Justice, PC 410 Arden Avenue, Suite 203 Glendale, California 91203 TELEPHONE NO.: (818) 265-1020 FAX NO.: (818) 265-1021 ATTORNEY FOR (Name): Plaintiff Justin Hester		FOR COURT USE ONLY FILED TULARE COUNTY SUPERIOR COURT VISALIA DIVISION MAY 18 2021 STEPHANIE L. AMERSON, CLERK BY: <u> </u>														
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Tulare STREET ADDRESS: 221 South Mooney Boulevard MAILING ADDRESS: CITY AND ZIP CODE: Visalia, CA 93291 BRANCH NAME: Visalia (County Civic Center)																
CASE NAME: Hester vs. Setton Pistachio of Terra Bella, Inc.																
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td colspan="2" style="text-align: center;">CIVIL CASE COVER SHEET</td> <td style="text-align: center;">Complex Case Designation</td> <td rowspan="2" style="text-align: center; vertical-align: middle;"> CASE NUMBER: # 287299 </td> </tr> <tr> <td style="width: 50%; padding: 5px;"> <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) </td> <td style="width: 50%; padding: 5px;"> <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less) </td> <td style="padding: 5px;"> <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402) </td> </tr> <tr> <td colspan="2"></td> <td style="padding: 5px;">JUDGE:</td> <td rowspan="2" style="padding: 5px;">DEPT:</td> </tr> <tr> <td colspan="2"></td> <td colspan="2"></td> </tr> </table>			CIVIL CASE COVER SHEET		Complex Case Designation	CASE NUMBER: # 287299	<input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000)	<input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	<input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)			JUDGE:	DEPT:			
CIVIL CASE COVER SHEET		Complex Case Designation	CASE NUMBER: # 287299													
<input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000)	<input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	<input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)														
		JUDGE:	DEPT:													

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:
- | | | |
|---|--|---|
| Auto Tort
<input type="checkbox"/> Auto (22)
<input type="checkbox"/> Uninsured motorist (46)
Other PI/PI/WD (Personal Injury/Property Damage/Wrongful Death) Tort
<input type="checkbox"/> Asbestos (04)
<input type="checkbox"/> Product liability (24)
<input type="checkbox"/> Medical malpractice (45)
<input type="checkbox"/> Other PI/PI/WD (23)
Non-PI/PI/WD (Other) Tort
<input type="checkbox"/> Business tort/unfair business practice (07)
<input type="checkbox"/> Civil rights (08)
<input type="checkbox"/> Defamation (13)
<input type="checkbox"/> Fraud (16)
<input type="checkbox"/> Intellectual property (19)
<input type="checkbox"/> Professional negligence (25)
<input type="checkbox"/> Other non-PI/PI/WD tort (35)
Employment
<input type="checkbox"/> Wrongful termination (36)
<input checked="" type="checkbox"/> Other employment (15) | Contract
<input type="checkbox"/> Breach of contract/warranty (06)
<input type="checkbox"/> Rule 3.740 collections (09)
<input type="checkbox"/> Other collections (09)
<input type="checkbox"/> Insurance coverage (18)
<input type="checkbox"/> Other contract (37)
Real Property
<input type="checkbox"/> Eminent domain/inverse condemnation (14)
<input type="checkbox"/> Wrongful eviction (33)
<input type="checkbox"/> Other real property (26)
Unlawful Detainer
<input type="checkbox"/> Commercial (31)
<input type="checkbox"/> Residential (32)
<input type="checkbox"/> Drugs (38)
Judicial Review
<input type="checkbox"/> Asset forfeiture (05)
<input type="checkbox"/> Petition re: arbitration award (11)
<input type="checkbox"/> Writ of mandate (02)
<input type="checkbox"/> Other judicial review (39) | Provisionally Complex Civil Litigation
(Cal. Rules of Court, rules 3.400-3.403)
<input type="checkbox"/> Antitrust/Trade regulation (03)
<input type="checkbox"/> Construction defect (10)
<input type="checkbox"/> Mass tort (40)
<input type="checkbox"/> Securities litigation (28)
<input type="checkbox"/> Environmental/Toxic tort (30)
<input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)
Enforcement of Judgment
<input type="checkbox"/> Enforcement of judgment (20)
Miscellaneous Civil Complaint
<input type="checkbox"/> RICO (27)
<input type="checkbox"/> Other complaint (not specified above) (42)
Miscellaneous Civil Petition
<input type="checkbox"/> Partnership and corporate governance (21)
<input type="checkbox"/> Other petition (not specified above) (43) |
|---|--|---|
2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☒ punitive
4. Number of causes of action (specify):
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: May 17, 2021

Edwin Aiwanian

(TYPE OR PRINT NAME)



(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE	
<ul style="list-style-type: none"> Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions. File this cover sheet in addition to any cover sheet required by local court rule. If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding. Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only. 	

Page 1 of 2

 Form Adopted for Mandatory Use
 Judicial Council of California
 CM-010 (Rev. July 1, 2007)

CIVIL CASE COVER SHEET

 Cal. Rules of Court, rules 2.30, 3.220, 3.400-3.403, 3.740.
 Cal. Standards of Judicial Administration, std. 3.10
 www.courtinfo.ca.gov



BY FAX

CM-010

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES**Auto Tort**

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (*not asbestos or toxic/environmental*) (24)
Medical Malpractice (45)
Medical Malpractice—Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (*not medical or legal*)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease Contract (*not unlawful detainer or wrongful eviction*)
Contract/Warranty Breach—Seller Plaintiff (*not fraud or negligence*)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (*not provisionally complex*) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (*non-domestic relations*)
Sister State Judgment
Administrative Agency Award (*not unpaid taxes*)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (*not specified above*) (42)
Declaratory Relief Only
Injunctive Relief Only (*non-harassment*)
Mechanics Lien
Other Commercial Complaint Case (*non-tort/non-complex*)
Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (*not specified above*) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition

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Assigned to Judicial Officer **BRETT D. HILLMAN**

For All Purposes

FILED
TULARE COUNTY SUPERIOR COURT
VISALIA DIVISION

MAY 18 2021

STEPHANIE CAMERON, CLERK
By: Farm Ching

1 Edwin Aiwarzian (SBN 232943)
2 **LAWYERS for JUSTICE, PC**
3 410 West Arden Avenue, Suite 203
4 Glendale, California 91203
5 Tel: (818) 265-1020
6 Fax: (818) 265-1021

Attorneys for Plaintiff

CASE MANAGEMENT CONFERENCE

Hearing Date: 10-13-2021
Time: 8:30 a.m.
Department: 7

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF TULARE**

LAWYERS for JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203

11 JUSTIN HESTER, individually, and on
12 behalf of other aggrieved employees
13 pursuant to the California Private Attorneys
14 General Act;

Plaintiff,

vs.

15 SETTON PISTACHIO OF TERRA BELLA,
16 INC., a California corporation; and DOES 1
17 through 100, inclusive,

Defendants.

Case No.: **# 287299**

**COMPLAINT FOR ENFORCEMENT
UNDER THE PRIVATE ATTORNEYS
GENERAL ACT, CALIFORNIA LABOR
CODE § 2698, ET SEQ.**

Violation of California Labor Code §
2698, et seq. (California Labor Code
Private Attorneys General Act of 2004)

DEMAND FOR JURY TRIAL

BY FAX

LAWYERS for JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203

COMES NOW, Plaintiff JUSTIN HESTER ("Plaintiff"), individually, and on behalf of other aggrieved employees pursuant to the California Private Attorneys General Act, and alleges as follows:

JURISDICTION AND VENUE

1. This representative action is brought pursuant to the California Labor Code section 2698, et seq. The civil penalties sought by Plaintiff exceed the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial.

2. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, Section 10, which grants the superior court "original jurisdiction in all other causes" except those given by statute to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

3. This Court has jurisdiction over Defendant because, upon information and belief, Defendant is a citizen of California, has sufficient minimum contacts in California, or otherwise intentionally avails itself of the California market so as to render the exercise of jurisdiction over it by the California courts consistent with traditional notions of fair play and substantial justice.

4. Venue is proper in this Court because, upon information and belief, Defendant maintains offices, has agents, and/or transacts business in the State of California, including the County of Tulare. The majority of the acts and omissions alleged herein relating to Plaintiff and the other aggrieved employees took place in the State of California, including the County of Tulare. At all relevant times, Defendant maintained its headquarters/"nerve center" within the State of California, County of Tulare.

PARTIES

5. Plaintiff JUSTIN HESTER is an individual residing in the State of California, County of Tulare.

6. Defendant SETTON PISTACHIO OF TERRA BELLA, INC. at all times herein mentioned, was and is, upon information and belief, a California corporation, and at

///

LAWYERS for JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203

1 all times herein mentioned, an employer whose employees are engaged throughout the State
2 of California, including the County of Tulare.

3 7. At all relevant times, SETTON PISTACHIO OF TERRA BELLA, INC. was
4 the "employer" of Plaintiff within the meaning of all applicable state laws and statutes.

5 8. At all times herein relevant, SETTON PISTACHIO OF TERRA BELLA, INC.
6 and DOES 1 through 100, and each of them, were the agents, partners, joint venturers, joint
7 employers, representatives, servants, employees, successors-in-interest, co-conspirators and
8 assigns, each of the other, and at all times relevant hereto were acting within the course and
9 scope of their authority as such agents, partners, joint venturers, representatives, servants,
10 employees, successors, co-conspirators and/or assigns, and all acts or omissions alleged
11 herein were duly committed with the ratification, knowledge, permission, encouragement,
12 authorization and/or consent of each defendant designated as a DOE herein.

13 9. The true names and capacities, whether corporate, associate, individual or
14 otherwise, of defendants DOES 1 through 100, inclusive, are unknown to Plaintiff who sues
15 said defendants by such fictitious names. Plaintiff is informed and believes, and based on
16 that information and belief alleges, that each of the defendants designated as a DOE is legally
17 responsible for the events and happenings referred to in this Complaint, and unlawfully
18 caused the injuries and damages to Plaintiff as alleged in this Complaint. Plaintiff will seek
19 leave of court to amend this Complaint to show the true names and capacities when the same
20 have been ascertained.

21 10. SETTON PISTACHIO OF TERRA BELLA, INC. and DOES 1 through 100
22 will hereinafter collectively be referred to as "Defendants."

23 11. Plaintiff further alleges that Defendants including the unknown defendants
24 identified as DOES, directly or indirectly controlled or affected the working conditions,
25 wages, working hours, and conditions of employment of Plaintiff and the other aggrieved
26 employees so as to make each of said Defendants employers and employers liable under the
27 statutory provisions set forth herein.

28 ///

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PAGA ALLEGATIONS

12. At all times herein set forth, PAGA was applicable to Plaintiff's employment by Defendants.

13. At all times herein set forth, PAGA provides that any provision of law under the California Labor Code that provides for a civil penalty to be assessed and collected by the LWDA for violations of the California Labor Code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of herself and other current or former employees pursuant to procedures outlined in California Labor Code section 2699.3.

14. Pursuant to PAGA, a civil action under PAGA may be brought by an "aggrieved employee," who is any person that was employed by the alleged violator and against whom one or more of the alleged violations was committed.

15. Plaintiff was employed by Defendants and the alleged violations were committed against him during his time of employment and he is, therefore, an aggrieved employee. Plaintiff and the other employees are "aggrieved employees" as defined by California Labor Code section 2699(c) in that they are all current or former employees of Defendants, and one or more of the alleged violations were committed against them.

16. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved employee, including Plaintiff, may pursue a civil action arising under PAGA after the following requirements have been met:

- a. The aggrieved employee shall give written notice by online submission (hereinafter "Employee's Notice") to the Labor & Workforce Development Agency (hereinafter "LWDA") and by U.S. Certified Mail to the employer of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations.
- b. The LWDA shall provide notice (hereinafter "LWDA Notice") to the employer and the aggrieved employee by certified mail that it does not

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intend to investigate the alleged violation within sixty (60) calendar days of the postmark date of the Employee's Notice. Upon receipt of the LWDA Notice, or if the LWDA Notice is not provided within sixty-five (65) calendar days of the postmark date of the Employee's Notice, the aggrieved employee may commence a civil action pursuant to California Labor Code section 2699 to recover civil penalties in addition to any other penalties to which the employee may be entitled.

17. On March 12, 2021, Plaintiff provided written notice by online submission to the LWDA and by U.S. Certified Mail to Defendant SETTON PISTACHIO OF TERRA BELLA, INC. of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. Plaintiff has not received an LWDA Notice within sixty-five (65) calendar days of the date of Plaintiff's notice.

18. Therefore, Plaintiff has satisfied the administrative prerequisites under California Labor Code section 2699.3(a) to recover civil penalties against Defendants, in addition to other remedies, for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802.

GENERAL ALLEGATIONS

19. At all relevant times set forth herein, Defendants employed Plaintiff and other aggrieved hourly-paid or non-exempt employees who worked for any of the Defendants in the State of California, including, but not limited to, all current and former hourly-paid or non-exempt employees who worked for any of the Defendants within the State of California who earned shift differentials/non-discretionary bonuses/non-discretionary performance pay which was not used to calculate the correct regular rate of pay used to calculate the overtime rate (hereinafter collectively referred to as the "other aggrieved employees").

20. Defendants, jointly and severally, employed Plaintiff as an hourly-paid, non-exempt employee from approximately September 2018 to approximately March 2020 in the State of California, County of Tulare.

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21. Defendants hired Plaintiff and the other aggrieved employees, and failed to compensate them for all hours worked, missed meal periods or rest breaks.

22. Defendants had the authority to hire and terminate Plaintiff and the other aggrieved employees, to set work rules and conditions governing Plaintiff's and the other aggrieved employees' employment, and to supervise their daily employment activities.

23. Defendants exercised sufficient authority over the terms and conditions of Plaintiff's and the other aggrieved employees' employment for them to be joint employers of Plaintiff and the other aggrieved employees.

24. Defendants directly hired and paid wages and benefits to Plaintiff and the other aggrieved employees.

25. Defendants continue to employ hourly-paid or non-exempt employees, within the State of California.

26. Plaintiff and the other aggrieved employees worked over eight (8) hours in a day, and/or forty (40) hours in a week during their employment with Defendants.

27. Plaintiff is informed and believes, and based thereon alleges, that Defendants engaged in a uniform policy and systematic scheme of wage abuse against their hourly-paid or non-exempt employees. This scheme involved, *inter alia*, failing to pay them for all hours worked and for missed (short, late, interrupted, and altogether missed) meal periods and rest breaks in violation of California law.

28. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that Plaintiff and the other aggrieved employees were entitled to receive certain wages for overtime compensation and that they were not receiving wages for overtime compensation.

29. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed to provide Plaintiff and the other aggrieved employees the required rest and meal periods during the relevant time period as required under the Industrial Welfare Commission Wage Orders and thus they are entitled to any and all applicable penalties.

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1 30. Plaintiff is informed and believes, and based thereon alleges, that Defendants
2 knew or should have known that Plaintiff and the other aggrieved employees were entitled to
3 receive all meal periods or payment of one additional hour of pay at Plaintiff's and the other
4 aggrieved employee's regular rate of pay when a meal period was missed, and they did not
5 receive all meal periods or payment of one additional hour of pay at Plaintiff's and the other
6 aggrieved employee's regular rate of pay when a meal period was missed.

7 31. Plaintiff is informed and believes, and based thereon alleges, that Defendants
8 knew or should have known that Plaintiff and the other aggrieved employees were entitled to
9 receive all rest periods or payment of one additional hour of pay at Plaintiff's and the other
10 aggrieved employees' regular rate of pay when a rest period was missed, and they did not
11 receive all rest periods or payment of one additional hour of pay at Plaintiff's and the other
12 aggrieved employees' regular rate of pay when a rest period was missed.

13 32. Plaintiff is informed and believes, and based thereon alleges, that Defendants
14 knew or should have known that Plaintiff and the other aggrieved employees were entitled to
15 receive at least minimum wages for compensation and that they were not receiving at least
16 minimum wages for all hours worked.

17 33. Plaintiff is informed and believes, and based thereon alleges, that Defendants
18 knew or should have known that Plaintiff and the other aggrieved employees were entitled to
19 receive all wages owed to them upon discharge or resignation, including overtime and
20 minimum wages and meal and rest period premiums, and they did not, in fact, receive all
21 such wages owed to them at the time of their discharge.

22 34. Plaintiff is informed and believes, and based thereon alleges, that Defendants
23 knew or should have known that Plaintiff and the other aggrieved employees were entitled to
24 receive all wages owed to them during their employment. Plaintiff and the other aggrieved
25 employees did not receive payment of all wages, including overtime and minimum wages
26 and meal and rest period premiums, within any time permissible under California Labor
27 Code section 204.

28 ///

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1 35. Plaintiff is informed and believes, and based thereon alleges, that Defendants
2 knew or should have known that Plaintiff and the other aggrieved employees were entitled to
3 receive complete and accurate wage statements in accordance with California law, but, in
4 fact, they did not receive complete and accurate wage statements from Defendants. The
5 deficiencies included, *inter alia*, the failure to include the total number of hours worked by
6 Plaintiff and the other aggrieved employees.

7 36. Plaintiff is informed and believes, and based thereon alleges, that Defendants
8 knew or should have known that Defendants had to keep complete and accurate payroll
9 records for Plaintiff and the other aggrieved employees in accordance with California law,
10 but, in fact, did not keep complete and accurate payroll records.

11 37. Plaintiff is informed and believes, and based thereon alleges, that Defendants
12 knew or should have known that Plaintiff and the other aggrieved employees were entitled to
13 reimbursement for necessary business-related expenses and costs.

14 38. Plaintiff is informed and believes, and based thereon alleges, that Defendants
15 knew or should have known that they had a duty to compensate Plaintiff and the other
16 aggrieved employees pursuant to California law, and that Defendants had the financial ability
17 to pay such compensation, but willfully, knowingly, and intentionally failed to do so, and
18 falsely represented to Plaintiff and the other aggrieved employees that they were properly
19 denied wages, all in order to increase Defendants' profits.

20 39. At all material times set forth herein, Defendants failed to pay overtime wages
21 to Plaintiff and the other aggrieved employees. Plaintiff and the other aggrieved employees
22 were required to work more than eight (8) hours per day and/or forty (40) hours per week
23 without overtime compensation.

24 40. At all material times set forth herein, Defendants failed to provide
25 uninterrupted meal and rest periods to Plaintiff and the other aggrieved employees.

26 41. At all material times set forth herein, Defendants failed to pay Plaintiff and the
27 other aggrieved employees at least minimum wages for all hours worked.

28 ///

48. California Labor Code section 218 states that noting in Article 1 of the Labor Code shall limit the right of any wage claimant to “sue directly . . . for any wages or penalty due to him [or her] under this article.”

50. PAGA expressly establishes that any provision of the California Labor Code which provides for a civil penalty to be assessed and collected by the LWDA, or any of its departments, divisions, commissions, boards, agencies or employees for a violation of the California Labor Code, may be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself, and other current or former employees.

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1 51. Whenever the LWDA, or any of its departments, divisions, commissions,
2 boards, agencies, or employees has discretion to assess a civil penalty, a court in a civil
3 action is authorized to exercise the same discretion, subject to the same limitations and
4 conditions, to assess a civil penalty.

5 52. Plaintiff and the other hourly-paid or non-exempt employees are "aggrieved
6 employees" as defined by California Labor Code section 2699(c) in that they are all current
7 or former employees of Defendants, and one or more of the alleged violations was committed
8 against them.

9 **Failure to Pay Overtime**

10 53. Defendants' failure to pay legally required overtime wages to Plaintiff and the
11 other aggrieved employees is in violation of the Wage Orders and constitutes unlawful or
12 unfair activity prohibited by California Labor Code sections 510 and 1198.

13 **Failure to Provide Meal Periods**

14 54. Defendants' failure to provide legally required meal periods to Plaintiff and
15 the other aggrieved employees is in violation of the Wage Orders and constitutes unlawful or
16 unfair activity prohibited by California Labor Code sections 226.7 and 512(a).

17 **Failure to Provide Rest Periods**

18 55. Defendants' failure to provide legally required rest periods to Plaintiff and the
19 other aggrieved employees is in violation of the Wage Orders and constitutes unlawful or
20 unfair activity prohibited by California Labor Code section 226.7.

21 **Failure to Pay Minimum Wages**

22 56. Defendants' failure to pay legally required minimum wages to Plaintiff and
23 the other aggrieved employees is in violation of the Wage Orders and constitutes unlawful or
24 unfair activity prohibited by California Labor Code sections 1194, 1197 and 1197.1.

25 **Failure to Timely Pay Wages Upon Termination**

26 57. Defendants' failure to timely pay wages to Plaintiff and the other aggrieved
27 employees upon termination in accordance with Labor Code sections 201 and 202 constitutes
28 unlawful and/or unfair activity prohibited by California Labor Code sections 201 and 202.

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Failure to Timely Pay Wages During Employment

58. Defendants' failure to timely pay wages to Plaintiff and the other aggrieved employees during employment in accordance with Labor Code section 204 constitutes unlawful and/or unfair activity prohibited by California Labor Code section 204.

Failure to Provide Complete and Accurate Wage Statements

59. Defendants' failure to provide complete and accurate wage statements to Plaintiff and the other aggrieved employees in accordance with Labor Code section 226(a) constitutes unlawful and/or unfair activity prohibited by California Labor Code section 226(a).

Failure to Keep Complete and Accurate Payroll Records

60. Defendants' failure to keep complete and accurate payroll records relating to Plaintiff and the other aggrieved employees in accordance with California Labor Code section 1174(d) constitutes unlawful and/or unfair activity prohibited by California Labor Code section 1174(d).

Failure to Reimburse Necessary Business-Related Expenses and Costs

61. Defendants' failure to reimburse Plaintiff and the other aggrieved employees for necessary business-related expenses and costs in accordance with California Labor Code sections 2800 and 2802 constitutes unlawful and/or unfair activity prohibited by California Labor Code sections 2800 and 2802.

62. Pursuant to California Labor Code section 2699, Plaintiff, individually, and on behalf of all aggrieved employees, requests and is entitled to recover from Defendants and each of them, attorneys' fees and costs pursuant to California Labor Code section 218.5, as well as all penalties pursuant to PAGA against Defendants, and each of them, including but not limited to:

- a. Penalties under California Labor Code section 2699 in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation;

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- b. Penalties under California Code of Regulations Title 8 section 11010 et seq. in the amount of fifty dollars (\$50) for each aggrieved employee per pay period for the initial violation, and one hundred dollars (\$100) for each aggrieved employee per pay period for each subsequent violation;
- c. Penalties under California Labor Code section 210 in addition to, and entirely independent and apart from, any other penalty provided in the California Labor Code in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation; and
- d. Any and all additional penalties and sums as provided by the California Labor Code and/or other statutes.

63. Pursuant to California Labor Code section 2699(i), civil penalties recovered by aggrieved employees shall be distributed as follows: seventy-five percent (75%) to the Labor and Workforce Development Agency for the enforcement of labor laws and education of employers and employees about their rights and responsibilities and twenty-five percent (25%) to the aggrieved employees.

64. Further, Plaintiff is entitled to seek and recover reasonable attorneys' fees and costs pursuant to California Labor Code sections 210, 218.5 and 2699 and any other applicable statute.

DEMAND FOR JURY TRIAL

Plaintiff, individually, and on behalf of other aggrieved employees pursuant to the California Private Attorneys General Act, requests a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually, and on behalf of other aggrieved employees pursuant to the Private Attorneys General Act, prays for relief and judgment against Defendants, jointly and severally, in excess of twenty-five thousand dollars (\$25,000):

///

As to the First Cause of Action

1. For civil penalties pursuant to California Labor Code sections 2699(a), (f) and (g), costs/expenses, and attorneys' fees for violation of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802; and

2. For such other and further relief as the Court may deem equitable and appropriate.

DATED: May 17, 2021

LAWYERS for JUSTICE, PC

By:



Edwin Aiwarzian
Attorneys for Plaintiff

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410 West Arden Avenue, Suite 203
Glendale, California 91203

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SUM-100

**SUMMONS
(CITACION JUDICIAL)****NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

SETTON PISTACHIO OF TERRA BELLA, INC., a California corporation; and DOES 1 through 100, inclusive,

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

JUSTIN HESTER, individually, and on behalf of other aggrieved employees pursuant to the California Private Attorneys General Act;

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 o más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tenga que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es): State of California

Tulare County Superior Court, Visalia (County Civic Center)
221 South Mooney Boulevard, Visalia, California 93291

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Edwin Aiwazian, 410 Arden Ave., Suite 203, Glendale, CA 91203; Telephone No. (818) 265-1020

CASE NUMBER:

(Número del Caso):

287299

DATE:
(Fecha)

Stephanie Cameron

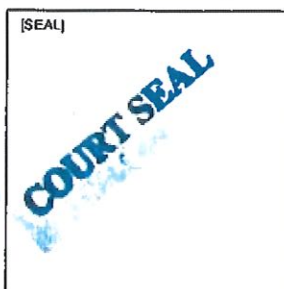
Clerk, by
(Secretario)

Farm Ching

, Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

**NOTICE TO THE PERSON SERVED: You are served**

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☒ on behalf of (specify): **SETTON PISTACHIO TERRA BELLA, INC., a California corporation**

- under: ☒ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)

- ☐ other (specify):
4. ☐ by personal delivery on (date):

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410 West Arden Avenue, Suite 203
Glendale, California 91203

Edwin Aiwazian (SBN 232943)
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Glendale, California 91203
Tel: (818) 265-1020
Fax: (818) 265-1021

Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF TULARE**

JUSTIN HESTER, individually, and on
behalf of other aggrieved employees
pursuant to the California Private Attorneys
General Act;

Plaintiff,

vs.

SETTON PISTACHIO OF TERRA BELLA,
INC., a California corporation; and DOES 1
through 100, inclusive,

Defendants.

Case No.: VCU287299

**FIRST AMENDED COMPLAINT FOR
ENFORCEMENT UNDER THE PRIVATE
ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE § 2698, ET
SEQ.**

Violation of California Labor Code §
2698, et seq. (California Labor Code
Private Attorneys General Act of 2004)

DEMAND FOR JURY TRIAL

COMES NOW, Plaintiff JUSTIN HESTER ("Plaintiff"), individually, and on behalf of other aggrieved employees pursuant to the California Private Attorneys General Act, and alleges as follows:

JURISDICTION AND VENUE

1. This representative action is brought pursuant to the California Labor Code section 2698, et seq. The civil penalties sought by Plaintiff exceed the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial.

2. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, Section 10, which grants the superior court "original jurisdiction in all other causes" except those given by statute to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

3. This Court has jurisdiction over Defendant because, upon information and belief, Defendant is a citizen of California, has sufficient minimum contacts in California, or otherwise intentionally avails itself of the California market so as to render the exercise of jurisdiction over it by the California courts consistent with traditional notions of fair play and substantial justice.

4. Venue is proper in this Court because, upon information and belief, Defendant maintains offices, has agents, and/or transacts business in the State of California, including the County of Tulare. The majority of the acts and omissions alleged herein relating to Plaintiff and the other aggrieved employees took place in the State of California, including the County of Tulare. At all relevant times, Defendant maintained its headquarters/"nerve center" within the State of California, County of Tulare.

PARTIES

5. Plaintiff JUSTIN HESTER is an individual residing in the State of California, County of Tulare.

6. Defendant SETTON PISTACHIO OF TERRA BELLA, INC. at all times herein mentioned, was and is, upon information and belief, a California corporation, and at

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1 all times herein mentioned, an employer whose employees are engaged throughout the State
2 of California, including the County of Tulare.

3 7. At all relevant times, SETTON PISTACHIO OF TERRA BELLA, INC. was
4 the “employer” of Plaintiff within the meaning of all applicable state laws and statutes.

5 8. At all times herein relevant, SETTON PISTACHIO OF TERRA BELLA, INC.
6 and DOES 1 through 100, and each of them, were the agents, partners, joint venturers, joint
7 employers, representatives, servants, employees, successors-in-interest, co-conspirators and
8 assigns, each of the other, and at all times relevant hereto were acting within the course and
9 scope of their authority as such agents, partners, joint venturers, representatives, servants,
10 employees, successors, co-conspirators and/or assigns, and all acts or omissions alleged
11 herein were duly committed with the ratification, knowledge, permission, encouragement,
12 authorization and/or consent of each defendant designated as a DOE herein.

13 9. The true names and capacities, whether corporate, associate, individual or
14 otherwise, of defendants DOES 1 through 100, inclusive, are unknown to Plaintiff who sues
15 said defendants by such fictitious names. Plaintiff is informed and believes, and based on
16 that information and belief alleges, that each of the defendants designated as a DOE is legally
17 responsible for the events and happenings referred to in this Complaint, and unlawfully
18 caused the injuries and damages to Plaintiff as alleged in this Complaint. Plaintiff will seek
19 leave of court to amend this Complaint to show the true names and capacities when the same
20 have been ascertained.

21 10. SETTON PISTACHIO OF TERRA BELLA, INC. and DOES 1 through 100
22 will hereinafter collectively be referred to as “Defendants.”

23 11. Plaintiff further alleges that Defendants including the unknown defendants
24 identified as DOES, directly or indirectly controlled or affected the working conditions,
25 wages, working hours, and conditions of employment of Plaintiff and the other aggrieved
26 employees so as to make each of said Defendants employers and employers liable under the
27 statutory provisions set forth herein.

28 ///

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PAGA ALLEGATIONS

12. At all times herein set forth, PAGA was applicable to Plaintiff's employment by Defendants.

13. At all times herein set forth, PAGA provides that any provision of law under the California Labor Code that provides for a civil penalty to be assessed and collected by the LWDA for violations of the California Labor Code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of herself and other current or former employees pursuant to procedures outlined in California Labor Code section 2699.3.

14. Pursuant to PAGA, a civil action under PAGA may be brought by an "aggrieved employee," who is any person that was employed by the alleged violator and against whom one or more of the alleged violations was committed.

15. Plaintiff was employed by Defendants and the alleged violations were committed against him during his time of employment and he is, therefore, an aggrieved employee. Plaintiff and the other employees are "aggrieved employees" as defined by California Labor Code section 2699(c) in that they are all current or former employees of Defendants, and one or more of the alleged violations were committed against them.

16. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved employee, including Plaintiff, may pursue a civil action arising under PAGA after the following requirements have been met:

- a. The aggrieved employee shall give written notice by online submission (hereinafter "Employee's Notice") to the Labor & Workforce Development Agency (hereinafter "LWDA") and by U.S. Certified Mail to the employer of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations.
- b. The LWDA shall provide notice (hereinafter "LWDA Notice") to the employer and the aggrieved employee by certified mail that it does not

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1 intend to investigate the alleged violation within sixty (60) calendar
2 days of the postmark date of the Employee's Notice. Upon receipt of
3 the LWDA Notice, or if the LWDA Notice is not provided within
4 sixty-five (65) calendar days of the postmark date of the Employee's
5 Notice, the aggrieved employee may commence a civil action pursuant
6 to California Labor Code section 2699 to recover civil penalties in
7 addition to any other penalties to which the employee may be entitled.

8 17. On March 12, 2021, Plaintiff provided written notice by online submission to
9 the LWDA and by U.S. Certified Mail to Defendant SETTON PISTACHIO OF TERRA
10 BELLA, INC. of the specific provisions of the California Labor Code alleged to have been
11 violated, including the facts and theories to support the alleged violations. Plaintiff has not
12 received an LWDA Notice within sixty-five (65) calendar days of the date of Plaintiff's
13 notice.

14 18. Therefore, Plaintiff has satisfied the administrative prerequisites under
15 California Labor Code section 2699.3(a) to recover civil penalties against Defendants, in
16 addition to other remedies, for violations of California Labor Code sections 201, 202, 203,
17 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802.

18 **GENERAL ALLEGATIONS**

19 19. At all relevant times set forth herein, Defendants employed Plaintiff and other
20 aggrieved hourly-paid or non-exempt employees who worked for any of the Defendants in
21 the State of California, including, but not limited to, all current and former hourly-paid or
22 non-exempt employees who worked for any of the Defendants within the State of California
23 who earned shift differentials/non-discretionary bonuses/non-discretionary performance pay
24 which was not used to calculate the correct regular rate of pay used to calculate the overtime
25 rate (hereinafter collectively referred to as the "other aggrieved employees").

26 20. Defendants, jointly and severally, employed Plaintiff as an hourly-paid, non-
27 exempt employee from approximately September 2018 to approximately March 2020 in the
28 State of California, County of Tulare.

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1 21. Defendants hired Plaintiff and the other aggrieved employees, and failed to
2 compensate them for all hours worked, missed meal periods or rest breaks.

3 22. Defendants had the authority to hire and terminate Plaintiff and the other
4 aggrieved employees, to set work rules and conditions governing Plaintiff's and the other
5 aggrieved employees' employment, and to supervise their daily employment activities.

6 23. Defendants exercised sufficient authority over the terms and conditions of
7 Plaintiff's and the other aggrieved employees' employment for them to be joint employers of
8 Plaintiff and the other aggrieved employees.

9 24. Defendants directly hired and paid wages and benefits to Plaintiff and the
10 other aggrieved employees.

11 25. Defendants continue to employ hourly-paid or non-exempt employees, within
12 the State of California.

13 26. Plaintiff and the other aggrieved employees worked over eight (8) hours in a
14 day, and/or forty (40) hours in a week during their employment with Defendants.

15 27. Plaintiff is informed and believes, and based thereon alleges, that Defendants
16 engaged in a uniform policy and systematic scheme of wage abuse against their hourly-paid
17 or non-exempt employees. This scheme involved, *inter alia*, failing to pay them for all hours
18 worked and for missed (short, late, interrupted, and altogether missed) meal periods and rest
19 breaks in violation of California law.

20 28. Plaintiff is informed and believes, and based thereon alleges, that Defendants
21 knew or should have known that Plaintiff and the other aggrieved employees were entitled to
22 receive certain wages for overtime compensation and that they were not receiving wages for
23 overtime compensation.

24 29. Plaintiff is informed and believes, and based thereon alleges, that Defendants
25 failed to provide Plaintiff and the other aggrieved employees the required rest and meal
26 periods during the relevant time period as required under the Industrial Welfare Commission
27 Wage Orders and thus they are entitled to any and all applicable penalties.

28 ///

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30. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that Plaintiff and the other aggrieved employees were entitled to receive all meal periods or payment of one additional hour of pay at Plaintiff's and the other aggrieved employee's regular rate of pay when a meal period was missed, and they did not receive all meal periods or payment of one additional hour of pay at Plaintiff's and the other aggrieved employee's regular rate of pay when a meal period was missed.

31. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that Plaintiff and the other aggrieved employees were entitled to receive all rest periods or payment of one additional hour of pay at Plaintiff's and the other aggrieved employees' regular rate of pay when a rest period was missed, and they did not receive all rest periods or payment of one additional hour of pay at Plaintiff's and the other aggrieved employees' regular rate of pay when a rest period was missed.

32. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that Plaintiff and the other aggrieved employees were entitled to receive at least minimum wages for compensation and that they were not receiving at least minimum wages for all hours worked.

33. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that Plaintiff and the other aggrieved employees were entitled to receive all wages owed to them upon discharge or resignation, including overtime and minimum wages and meal and rest period premiums, and they did not, in fact, receive all such wages owed to them at the time of their discharge.

34. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that Plaintiff and the other aggrieved employees were entitled to receive all wages owed to them during their employment. Plaintiff and the other aggrieved employees did not receive payment of all wages, including overtime and minimum wages and meal and rest period premiums, within any time permissible under California Labor Code section 204.

///

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1 35. Plaintiff is informed and believes, and based thereon alleges, that Defendants
2 knew or should have known that Plaintiff and the other aggrieved employees were entitled to
3 receive complete and accurate wage statements in accordance with California law, but, in
4 fact, they did not receive complete and accurate wage statements from Defendants. The
5 deficiencies included, *inter alia*, the failure to include the total number of hours worked by
6 Plaintiff and the other aggrieved employees.

7 36. Plaintiff is informed and believes, and based thereon alleges, that Defendants
8 knew or should have known that Defendants had to keep complete and accurate payroll
9 records for Plaintiff and the other aggrieved employees in accordance with California law,
10 but, in fact, did not keep complete and accurate payroll records.

11 37. Plaintiff is informed and believes, and based thereon alleges, that Defendants
12 knew or should have known that Plaintiff and the other aggrieved employees were entitled to
13 reimbursement for necessary business-related expenses and costs.

14 38. Plaintiff is informed and believes, and based thereon alleges, that Defendants
15 knew or should have known that they had a duty to compensate Plaintiff and the other
16 aggrieved employees pursuant to California law, and that Defendants had the financial ability
17 to pay such compensation, but willfully, knowingly, and intentionally failed to do so, and
18 falsely represented to Plaintiff and the other aggrieved employees that they were properly
19 denied wages, all in order to increase Defendants' profits.

20 39. At all material times set forth herein, Defendants failed to pay overtime wages
21 to Plaintiff and the other aggrieved employees. Plaintiff and the other aggrieved employees
22 were required to work more than eight (8) hours per day and/or forty (40) hours per week
23 without overtime compensation.

24 40. At all material times set forth herein, Defendants failed to provide
25 uninterrupted meal and rest periods to Plaintiff and the other aggrieved employees.

26 41. At all material times set forth herein, Defendants failed to pay Plaintiff and the
27 other aggrieved employees at least minimum wages for all hours worked.

28 ///

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1 42. At all material times set forth herein, Defendants failed to pay Plaintiff and the
2 other aggrieved employees all wages owed to them upon discharge or resignation.

3 43. At all material times set forth herein, Defendants failed to pay Plaintiff and the
4 other aggrieved employees' wages within any time permissible under California law,
5 including, *inter alia*, California Labor Code section 204.

6 44. At all material times set forth herein, Defendants failed to provide complete
7 and accurate wage statements to Plaintiff and the other aggrieved employees.

8 45. At all material times set forth herein, Defendants failed to keep complete and
9 accurate payroll records for Plaintiff and the other aggrieved employees.

10 46. At all material times set forth herein, Defendants failed to reimburse Plaintiff
11 and the other aggrieved employees for necessary business-related expenses and costs.

12 47. At all material times set forth herein, Defendants failed to properly
13 compensate Plaintiff and the other aggrieved employees pursuant to California law in order
14 to increase Defendants' profits.

15 48. California Labor Code section 218 states that noting in Article 1 of the Labor
16 Code shall limit the right of any wage claimant to "sue directly . . . for any wages or penalty
17 due to him [or her] under this article."

18 **FIRST CAUSE OF ACTION**

19 **Violation of California Labor Code § 2698, et seq.**

20 **(Against SETTON PISTACHIO OF TERRA BELLA, INC. and DOES 1 through 100)**

21 49. Plaintiff incorporates by reference the allegations contained in paragraphs 1
22 through 48, and each and every part thereof with the same force and effect as though fully set
23 forth herein.

24 50. PAGA expressly establishes that any provision of the California Labor Code
25 which provides for a civil penalty to be assessed and collected by the LWDA, or any of its
26 departments, divisions, commissions, boards, agencies or employees for a violation of the
27 California Labor Code, may be recovered through a civil action brought by an aggrieved
28 employee on behalf of himself or herself, and other current or former employees.

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51. Whenever the LWDA, or any of its departments, divisions, commissions, boards, agencies, or employees has discretion to assess a civil penalty, a court in a civil action is authorized to exercise the same discretion, subject to the same limitations and conditions, to assess a civil penalty.

52. Plaintiff and the other hourly-paid or non-exempt employees are “aggrieved employees” as defined by California Labor Code section 2699(c) in that they are all current or former employees of Defendants, and one or more of the alleged violations was committed against them.

Failure to Provide Meal Periods

53. Defendants’ failure to provide legally required meal periods to Plaintiff and the other aggrieved employees is in violation of the Wage Orders and constitutes unlawful or unfair activity prohibited by California Labor Code sections 226.7 and 512(a).

Failure to Provide Rest Periods

54. Defendants’ failure to provide legally required rest periods to Plaintiff and the other aggrieved employees is in violation of the Wage Orders and constitutes unlawful or unfair activity prohibited by California Labor Code section 226.7.

Failure to Timely Pay Wages During Employment

55. Defendants’ failure to timely pay wages to Plaintiff and the other aggrieved employees during employment in accordance with Labor Code section 204 constitutes unlawful and/or unfair activity prohibited by California Labor Code section 204.

Failure to Keep Complete and Accurate Payroll Records

56. Defendants’ failure to keep complete and accurate payroll records relating to Plaintiff and the other aggrieved employees in accordance with California Labor Code section 1174(d) constitutes unlawful and/or unfair activity prohibited by California Labor Code section 1174(d).

Failure to Reimburse Necessary Business-Related Expenses and Costs

57. Defendants’ failure to reimburse Plaintiff and the other aggrieved employees for necessary business-related expenses and costs in accordance with California Labor Code

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sections 2800 and 2802 constitutes unlawful and/or unfair activity prohibited by California Labor Code sections 2800 and 2802.

58. Pursuant to California Labor Code section 2699, Plaintiff, individually, and on behalf of all aggrieved employees, requests and is entitled to recover from Defendants and each of them, attorneys' fees and costs pursuant to California Labor Code section 218.5, as well as all penalties pursuant to PAGA against Defendants, and each of them, including but not limited to:

- a. Penalties under California Labor Code section 2699 in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation;
- b. Penalties under California Code of Regulations Title 8 section 11010 et seq. in the amount of fifty dollars (\$50) for each aggrieved employee per pay period for the initial violation, and one hundred dollars (\$100) for each aggrieved employee per pay period for each subsequent violation;
- c. Penalties under California Labor Code section 210 in addition to, and entirely independent and apart from, any other penalty provided in the California Labor Code in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation; and
- d. Any and all additional penalties and sums as provided by the California Labor Code and/or other statutes.

59. Pursuant to California Labor Code section 2699(i), civil penalties recovered by aggrieved employees shall be distributed as follows: seventy-five percent (75%) to the Labor and Workforce Development Agency for the enforcement of labor laws and education of employers and employees about their rights and responsibilities and twenty-five percent (25%) to the aggrieved employees.

60. Further, Plaintiff is entitled to seek and recover reasonable attorneys' fees and costs pursuant to California Labor Code sections 210, 218.5 and 2699 and any other applicable statute.

DEMAND FOR JURY TRIAL

Plaintiff, individually, and on behalf of other aggrieved employees pursuant to the California Private Attorneys General Act, requests a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually, and on behalf of other aggrieved employees pursuant to the Private Attorneys General Act, prays for relief and judgment against Defendants, jointly and severally, in excess of twenty-five thousand dollars (\$25,000):

As to the First Cause of Action

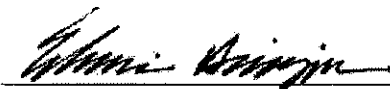
1. For civil penalties pursuant to California Labor Code sections 2699(a), (f) and (g), costs/expenses, and attorneys' fees for violation of California Labor Code sections 204, 226.7, 512(a), 1174(d), 2800 and 2802; and

2. For such other and further relief as the Court may deem equitable and appropriate.

DATED: November 12, 2021

LAWYERS for JUSTICE, PC

By:



Edwin Aiwanian
Attorneys for Plaintiff

LAWYERS for JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 410 West Arden Avenue, Suite 203, Glendale, California 91203.

On November 12, 2021, I served the foregoing document(s) described as:

- **FIRST AMENDED COMPLAINT FOR ENFORCEMENT UNDER THE PRIVATE ATTORNEYS GENERAL ACT, CALIFORNIA LABOR CODE § 2698, ET SEQ.**

on interested parties in this action as follows:

Anthony Raimondo
James D. Miller
Kevin B. Piercy
RAIMONDO & ASSOCIATE, a Law Corporation
7110 N. Marks Avenue, Suite 104
Fresno, CA 93711
Mailing Address: P.O. Box 28100
Fresno, CA 93729

P.O. Box 28100
Fresno, CA 93729

Attorneys for Defendant Setton Pistachio of Terra Bella, Inc.

[X] BY GENERAL LOGISTICS SYSTEMS (GLS)/FEDEX EXPRESS

I placed such documents in a General Logistics Systems (GLS)/FedEx Express Envelope addressed to the party or parties listed above with delivery fees fully pre-paid for overnight delivery by the close of the next business day, and caused it to be delivered to a General Logistics Systems (GLS) drop-off box before 7:00/FedEx Express 5:00 p.m. on the stated date.

[X] BY U.S. MAIL

As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with U.S. Postal Service on that day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.

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PROOF OF SERVICE

LAWYERS for JUSTICE, PC

410 West Arden Avenue, Suite 203

Glendale, California 91203

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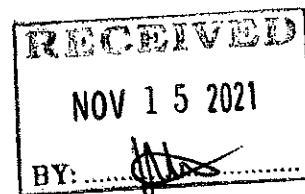
☒ **STATE**

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on November 12, 2021, at Glendale, California.

Celenia Ramos

Celenia Ramos



PROOF OF SERVICE

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1 Anthony Raimondo, #200387
apr@raimondoassociates.com
2 James D. Miller, #207709
jdm@raimondoassociates.com
3 Kevin B. Piercy, #322029
kbp@raimondoassociates.com
4 RAIMONDO & ASSOCIATES, a Law Corporation
P.O. Box 28100
5 Fresno, California 93729
Telephone: (559) 432-3000
6 Facsimile: (559) 432-2242
7 Attorneys for Defendant
Setton Pistachio of Terra Bella, Inc.

(SPACE BELOW FOR FILING STAMP ONLY)

FILED
TULARE COUNTY SUPERIOR COURT
VISALIA DIVISION
DEC 17 2021
STEPHANIE CAMERON, CLERK
BY: _____
Leticia Hernandez-Sandoval

8
9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF TULARE

12 JUSTIN HESTER, individually, and on behalf
13 of other aggrieved employees pursuant to the
California Private Attorneys General Act

14 Plaintiff,

15 v.

16 SETTON PISTACHIO OF TERRA BELLA,
17 INC., a California corporation; and DOES 1
through 100, inclusive,

18 Defendants.
19
20

Case No. 287299

**DEFENDANT'S ANSWER TO FIRST
AMENDED COMPLAINT**

Complaint Filed: May 18, 2021

21 Defendant, SETTON PISTACHIO OF TERRA BELLA, INC., ("Defendant"), hereby answers
22 the Complaint filed by Plaintiff, JUSTIN HESTER ("Plaintiff") as follows:

23 **I.**

24 **GENERAL DENIAL**

25 Pursuant to California Code of Civil Procedure § 431.30(d), Defendant denies generally and
26 specifically each and every allegation contained in the Complaint. In addition, Defendant denies that
27 Plaintiff has sustained, or will sustain, any loss or damage in the manner or amount alleged, or
28 otherwise, by reason of any act or omission, or any other conduct or absence thereof on the part of

RAIMONDO &
ASSOCIATES
P.O. Box 28100
Fresno, CA 93729

DEFENDANT'S ANSWER TO FIRST AMENDED COMPLAINT

BY FAX

1 Defendant.

2 **II**

3 **AFFIRMATIVE DEFENSES**

4 Without waiving or excusing the burden of proof of Plaintiff, or admitting that
5 Defendant has any burden of proof; Defendant asserts the following affirmative defenses:

6 **FIRST AFFIRMATIVE DEFENSE**

7 **(Failure to State a Cause of Action)**

8 As a separate and distinct affirmative defense, Defendant alleges that the Complaint, and each
9 and every alleged cause of action therein, fails to state facts sufficient to constitute a cause of action
10 upon which relief can be granted.

11 **SECOND AFFIRMATIVE DEFENSE**

12 **(Failure to Mitigate)**

13 As a separate and distinct affirmative defense, Defendant alleges that Plaintiff and the putative
14 class members have failed, refused, and/or neglected to mitigate or avoid the damages complained of
15 in the Complaint, if any.

16 **THIRD AFFIRMATIVE DEFENSE**

17 **(Laches)**

18 As a separate and distinct affirmative defense, Defendant alleges that the Complaint, and
19 each and every alleged cause of action therein are barred, in whole or in part, by the equitable
20 doctrine of laches.

21 **FOURTH AFFIRMATIVE DEFENSE**

22 **(Estoppel)**

23 As a separate and distinct affirmative defense, Defendant alleges that Plaintiff and the putative
24 class members are estopped by their conduct from asserting each of the causes of action upon which
25 they seek relief.

26 **FIFTH AFFIRMATIVE DEFENSE**

27 **(Waiver)**

28 As a separate and distinct affirmative defense, Defendant alleges that the Complaint, and each

1 and every alleged cause of action therein are barred by the doctrine of waiver.

2 **SIXTH AFFIRMATIVE DEFENSE**

3 **(Consent)**

4 As a separate and distinct affirmative defense, Defendant alleges that the Complaint, and each
5 and every alleged cause of action therein are barred, in whole or in part, because Plaintiff consented
6 to the conduct about which they now complain.

7 **SEVENTH AFFIRMATIVE DEFENSE**

8 **(Unjust Enrichment)**

9 As a separate and distinct affirmative defense, Defendant alleges that Plaintiff and the putative
10 class members have not suffered any losses and Defendant has not been unjustly enriched as a result
11 of any action or inaction by Defendant or its agents. Plaintiff is therefore not entitled to any
12 disgorgement or restitution.

13 **EIGHTH AFFIRMATIVE DEFENSE**

14 **(No Unpaid Wages)**

15 As a separate and distinct affirmative defense, Defendant alleges that Plaintiff and the putative
16 class members have been paid and/or received all wages due to them by virtue of their employment.

17 **NINTH AFFIRMATIVE DEFENSE**

18 **(Statute of Limitations)**

19 As a separate and distinct affirmative defense, Defendant alleges that all or portions of the
20 claims set forth in the Complaint are barred by the applicable statute of limitations, including, but
21 not limited to, California Code of Civil Procedure sections 337, 338, 339, 340, 343, and
22 California Business and Professions Code sections 16750.1 and 17208.

23 **TENTH AFFIRMATIVE DEFENSE**

24 **(Good Faith)**

25 As a separate and distinct affirmative defense, Defendant alleges that Plaintiff and the putative
26 class members were treated fairly and in good faith, and that all actions taken with regard to them
27 were taken for lawful business reasons and in good faith.

28 ///

ELEVENTH AFFIRMATIVE DEFENSE

(Avoidable Consequences)

As a separate and distinct affirmative defense, Defendant alleges that each purported cause of action in the Complaint, or some of the causes of action, are barred, or recovery should be reduced, pursuant to the doctrine of avoidable consequences.

TWELFTH AFFIRMATIVE DEFENSE

(No Violation of California Labor Code or any Wage Order of the Industrial Welfare Commission)

As a separate and distinct affirmative defense, Defendant alleges that the Complaint and each cause of action set forth therein cannot be maintained because, without admitting that any violation took place, Defendant alleges that any violation of the California Labor Code or of a Wage Order of the Industrial Welfare Commission was an act or omission made in good faith, and that in any participation in such acts, Defendant had reasonable grounds for believing that the act or omission was not a violation of the California Labor Code or any Wage Order of the Industrial Welfare Commission.

THIRTEENTH AFFIRMATIVE DEFENSE

(No Willful Failure to Pay)

As a separate and distinct affirmative defense, Defendant alleges that assuming *arguendo* that Plaintiff and the putative class members are entitled to additional compensation, Defendant has not willfully or intentionally failed to pay any such additional compensation to Plaintiff and the putative class members, to justify any awards of penalties or fees.

FOURTEENTH AFFIRMATIVE DEFENSE

(Failure to Exhaust Administrative Remedies)

As a separate and distinct affirmative defense, Defendant alleges that the Complaint and each cause of action set forth therein are barred because Plaintiff failed to timely and completely exhaust the requisite administrative remedies, statutory, and/or contractual remedies available to him prior to commencing this action.

///

1 **FIFTEENTH AFFIRMATIVE DEFENSE**

2 **(Lack of Standing)**

3 As a separate and distinct affirmative defense, Defendant alleges that Plaintiff lacks standing
4 to bring his claims as to all or a portion of the claims alleged in the Complaint.

5 **SIXTEENTH AFFIRMATIVE DEFENSE**

6 **(Lack of Due Process)**

7 As a separate and distinct affirmative defense, Defendant alleges that, to the extent that
8 Plaintiff claims penalties, such claims must comport with the due process requirements of *State Farm*
9 *v. Campbell*, 538 U.S. 408 (2003) and subsequent case law regarding the same issue.

10 **SEVENTEENTH AFFIRMATIVE DEFENSE**

11 **(Reservation)**

12 As a separate and distinct affirmative defense, Defendant states that it does not presently know
13 all facts concerning the conduct of Plaintiff and his claims sufficient to state all affirmative defenses at
14 this time. Defendant will seek leave of this Court to amend this Answer should it later discover facts
15 demonstrating the existence of additional affirmative defenses.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Defendant pray for judgment from this Court as follows:

- 18 1. Plaintiff takes nothing by this action;
- 19 2. That the Complaint be dismissed with prejudice and that judgment be entered
20 against Plaintiff and in favor of Defendant on each cause of action;
- 21 3. That Defendant be awarded their attorneys' fees and costs of suit herein to the
22 extent permitted under applicable law; and
- 23 4. Such other and further relief as the Court deems appropriate and proper.

24 ///

25 ///

26 ///

27 ///

28 ///

1 Dated: December 17, 2021

RAIMONDO & ASSOCIATES, ALC

By: 

Kevin B. Piercy

Attorneys for Defendant

Setton Pistachio of Terra Bella, Inc.

RAIMONDO &
ASSOCIATES
P.O. Box 28100
Fresno, CA 93729

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is Raimondo & Associates, 7110 North Marks Avenue, Suite 104, Fresno, California 93711. My business mailing address is Raimondo & Associates, P.O. Box 28100, Fresno, California 93729. On December 17, 2021, I served the within documents:

DEFENDANT'S ANSWER TO FIRST AMENDED COMPLAINT

☒ **BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the person(s) at the address(es) set forth below. I placed the envelope for collection and mailing following ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Fresno, California.

☒ **BY ELECTRONIC SUBMISSION:** Based on a court order or an agreement of the parties to accept electronic service, I caused the document(s) to be sent to the person(s) at the electronic service address(es) listed below.

Edwin Aiwarzian, Esq.
LAWYERS FOR JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, CA 91203
TEL: 818-265-1020
FAX: 818-265-1021
e-service@calljustice.com

Attorneys for Plaintiff,
JUSTIN HESTER

I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on December 17, 2021, at Fresno, California.


Jason Dunbar

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Orders

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FILED
TULARE COUNTY SUPERIOR COURT
VISALIA DIVISION

OCT 28 2021

STEPHANIE CAMERON, CLERK
BY: *[Signature]*

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF TULARE

Case No.: VCU287299

JUSTIN HESTER,
Plaintiff,

VS.

SETTON PISTACHIO OF TERRA BELLA,
INC.,
Defendant.

RULING
ON DEMURRER
TO
PLAINTIFF'S
COMPLAINT

The court sustains defendants' demurrer to plaintiff's complaint with fifteen days leave to amend as to claims 1,4,5, and 7. The court overrules the demurrer as to claims 2,3,6,8 and 9. Defendant's Request for Judicial Notice is granted. Evidence Code §452(h)

OPERATIVE FACTS

Plaintiff Justin Hester is seeking relief under the Private Attorneys Generals Act. His complaint was filed May 18,2021, Defendant asserts that certain of these PAGA claims are covered by existing litigation *Lilia Ali v. Setton Pistachios of Terra Bella* pending in this county, VCU 265134

STANDARD OF REVIEW

A demurrer tests whether a pleading states a cause of action or defense, and in the words of the California Supreme Court in *Moore v. Regents of the Univ. of Cal.* (1990) 51 Cal.3d 120, 125: “Accordingly, we assume that complaint’s properly pleaded material allegations are true and give the complaint a reasonable interpretation by reading it as a whole and all of its parts in their context . . . we do not, however, assume the truth of the contentions, deductions, or conclusions of fact or law . . .” (citations omitted.)

For the purpose of testing the sufficiency of a cause of action, the demurrer admits the truth of all material facts properly pleaded – no matter how unlikely or improbably the allegations may be. See *Aubry v. Tri-City Hosp. Dist.* (1992) 2 Cal.4th 962, 966-967, The plaintiff’s ability or inability to prove the allegations is of no concern at the demurrer stage. See *Committee on Children’s Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197-213-214

Where the facts alleged in a cause of action are inadequate or impermissible as a matter of law to sustain that cause of action, a demurrer is appropriate. See CCP §430.10; *Rakestraw v. California Physician’s Service* (2000) 81 Cal.App. 4th 39, 42, 43. Thus, the function of a demurrer is to test the sufficiency of a pleading by raising questions of law. See *Whitcomb v. County of Yolo* (1977) 73 Cal.App.3d 698,702.

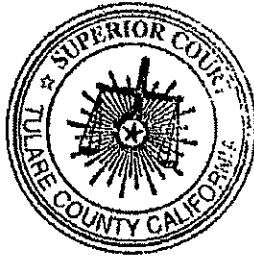
All presumptions are against the pleader and all doubts as to whether a cause of action is pled are resolved against the proponent of the pleading, since it is presumed that the pleading states the cause as favorably as possible. See *Richmond Development Agency v. Western Tile Guarantee* (1975) 48 Cal.App.3d 343,349.

AUTHORITY AND ANALYSIS

Here, certain of the claims are encompassed by the Ali litigation, and some claims are not. At the hearing, the parties agreed that the PAGA claims for violations of Labor code section 510 (failure to pay overtime). Labor code section 1194 and 1197 (failure to pay minimum wage), Labor Code section 226 (failure to provide accurate wage statements), and Labor Code section 201,202 (failure to

1 timely pay wages on termination) were encompassed in the Ali litigation. The demurrers to these
2 claims are sustained with fifteen days leave to amend. Leave to amend should be liberally granted,
3 but the claims identical to those in the Ali action will not be allowed to proceed here. The claims for
4 failure to provide complaint meal and rest periods, failure to keep required payroll records and failure
5 to reimburse necessary business expenses are not part of the Ali to this litigation. The demurrers to
6 these claims are overruled.

7
8 Dated 10-28-21



Bret D. Hillman
The Honorable Bret D. Hillman
Judge of the Superior Court County of Tulare

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF TULARE**

Visalia Division
221 S Mooney Blvd, Room 303
Visalia, CA 93291
559.730.5000

FILED
TULARE COUNTY SUPERIOR COURT
VISALIA DIVISION

OCT 29 2021

STEPHANIE CAMERON, CLERK
BY: 

Hester, Justin
Plaintiff/Petitioner,

vs.

Setton Pistachio of Terra Bella, Inc.
Defendant/Respondent.

Case No. VCU287299

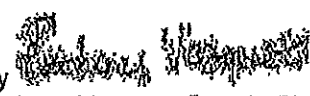
CLERK'S CERTIFICATE OF SERVICE

I certify that I am not a party to this cause.

I certify that I caused the Ruling dated October 28, 2021 to be served on the persons listed below in the following manner:

☒ BY MAIL: I placed the documents for collection and mailing on the date shown, so as to cause it to be mailed in a sealed envelope with postage fully prepaid on that date following standard court practices to the persons and addresses shown. The mailing and this certification occurred at Visalia, California on November 1, 2021.

STEPHANIE CAMERON,
CLERK OF THE SUPERIOR COURT
COUNTY OF TULARE

By 
Bethany Vasquez, Deputy Clerk

Names and Mailing/E-Mail Address of Person(s) Served:
ANTHONY RAIMONDO
PO BOX 28100
FRESNO, CA 93729

EDWIN AIWAZIAN
410 WEST ARDEN AVENUE, SUITE 203
GLENDALE, CA 91203

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ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Edwin Aiwazian (SBN 232943); Travis Maher (SBN 327206) LAWYERS for JUSTICE, PC 410 Arden Avenue, Suite 203 Glendale, California 91203 TELEPHONE NO.: (818) 265-1020 FAX NO. (Optional): (818) 265-1021 E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): Plaintiff Justin Hester		FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF TULARE STREET ADDRESS: 221 South Mooney Boulevard MAILING ADDRESS: CITY AND ZIP CODE: Visalia, 93291 BRANCH NAME: Visalia (County Civic Center) - Civil Division		
PLAINTIFF/PETITIONER: Justin Hester DEFENDANT/RESPONDENT: Setton Pistachio of Terra Bella, Inc.		
<div style="text-align: center;"> NOTICE OF ENTRY OF JUDGMENT OR ORDER </div> <div style="display: flex; justify-content: space-between;"> <div> (Check one): <input checked="" type="checkbox"/> UNLIMITED CASE (Amount demanded exceeded \$25,000) </div> <div> <input type="checkbox"/> LIMITED CASE (Amount demanded was \$25,000 or less) </div> </div>		
		CASE NUMBER: <div style="text-align: center; font-size: 1.2em;">VCU287299 / Dept 7</div>

TO ALL PARTIES :

1. A judgment, decree, or order was entered in this action on *(date)*: February 25, 2022
2. A copy of the judgment, decree, or order is attached to this notice.

EXHIBIT A - Order Deeming Case Complex and Continuing Trial Date and Related Pre-Trial Deadlines

Date: March 3, 2022

Edwin Aiwazian

(TYPE OR PRINT NAME OF	<input checked="" type="checkbox"/>	ATTORNEY	<input type="checkbox"/>	PARTY WITHOUT ATTORNEY)
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Ekimi Düzgün

(SIGNATURE)

EXHIBIT A

ELECTRONICALLY FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF TULARE

02/25/2022

STEPHANIE CAMERON, CLERK
Farm Ching, Deputy

1 Edwin Aiwarzian (SBN 232943)
2 Arby Aiwarzian (SBN 269827)
3 Tara Zabehi (SBN 314706)
4 Travis J. Maher (SBN 327206)
5 LAWYERS for JUSTICE, PC
6 410 West Arden Avenue, Suite 203
7 Glendale, California 91203
8 Tel: (818) 265-1020 / Fax: (818) 265-1021

9 *Attorneys for Plaintiff*

10 Anthony Raimondo (SBN 200837)
11 James D. Miller (SBN 207709)
12 Kevin B. Piercy (SBN 322029)
13 RAIMONDO & ASSOCIATES, a Law Corporation
14 7110 N. Marks Avenue, Suite 104
15 Fresno, CA 93711
16 Mailing Address: P.O. Box 28100
17 Fresno, CA 93729

18 *Attorneys for Defendant*

19 SUPERIOR COURT OF THE STATE OF CALIFORNIA
20 FOR THE COUNTY OF TULARE

21 JUSTIN HESTER, individually, and on behalf
22 of other aggrieved employees pursuant to the
23 California Private Attorneys General Act;

24 Plaintiff,

25 vs.

26 SETTON PISTACHIO OF TERRA BELLA,
27 INC., a California corporation; and DOES 1
28 through 100, inclusive,

Defendants.

Case No. VCU287299

Honorable Bret Hillman
Department 7

JOINT STIPULATION TO DEEM CASE
COMPLEX AND CONTINUE TRIAL
DATE AND RELATED PRE-TRIAL
DEADLINES

Complaint Filed: May 18, 2021
FAC Filed: November 12, 2021
Jury Trial Date: June 6, 2022

JOINT STIPULATION TO DEEM CASE COMPLEX AND CONTINUE TRIAL DATE AND RELATED
PRE-TRIAL DEADLINES

X 02 - 21 - 22

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Glendale, California 91203

#35

LAWYERS for JUSTICE, PC
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Glendale, California 91203

1 Plaintiff Justin Hester ("Plaintiff") and Defendant Setton Pistachio of Terra Bella, Inc.
2 ("Defendant")(collectively, "the Parties") by and through their counsel of record, hereby
3 stipulate as follows:

4 WHEREAS, on May 18, 2021, Plaintiff's counsel of record filed a PAGA
5 representative lawsuit in the Tulare County Superior Court, on behalf of all current and former
6 hourly-paid or non-exempt individuals employed by Defendant within the State of California
7 from February 24, 2016 to the present ("covered employees"), entitled, *Justin Hester v. Setton*
8 *Pistachio of Terra Bella, Inc.*, Case No. VCU287299, which alleged one cause of action against
9 Defendant, for violation of California Labor Code § 2698, *et seq.* pursuant to the California
10 Private Attorneys General Act ("PAGA"), for the following underlying claims: (1) violation of
11 California Labor Code §§ 510 and 1198 (unpaid overtime); (2) violation of California Labor
12 Code §§ 226.7 and 512(a) (unpaid meal period premiums); (3) violation of California Labor
13 Code § 226.7 (unpaid rest period premiums); (4) violation of California Labor Code §§ 1194,
14 1197, and 1197.1 (unpaid minimum wages); (5) violation of California Labor Code §§ 201 and
15 202 (final wages not timely paid); (6) violation of California Labor Code § 204 (wages not
16 timely paid during employment); (7) violation of California Labor Code § 226(a) (non-
17 compliant wage statements); (8) violation of California Labor Code § 1174(d) (failure to keep
18 requisite payroll records); (9) violation of California Labor Code §§ 2800 and 2802
19 (unreimbursed business expenses);

20 WHEREAS, on August 30, 2021, Defendant demurred to Plaintiff's Complaint on the
21 basis of a separate pending action, entitled *Lilia Ali v. Setton Pistachio of Terra Bella, Inc.*,
22 Tulare County Superior Court, Case No. PCU265134, which asserts overlapping claims against
23 Defendant pursuant to PAGA, California Labor Code § 2698, *et seq.*;

24 WHEREAS, on October 13, 2021, the Court held a Case Management Conference and
25 set the following deadlines: Mediation Completion date: May 2, 2022; Settlement Conference:
26 May 19, 2022 at 8:30 a.m.; Other Trial Related Deadlines including Deadline to Lodge all
27 Documents: May 31, 2022; Trial Readiness Conference: June 3, 2022 at 8:30 a.m.; Jury Trial:
28 June 6, 2022 at 9:00 a.m.; immediately after the Case Management Conference, counsel for

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1 Plaintiff and counsel for Defendant met and conferred and agreed to Justice Steven M.
2 Vartabedian (Ret.) as a suitable private mediator, and informed the Court of the Parties'
3 selection at approximately noon by phone call;

4 WHEREAS, on October 28, 2021, the Court sustained Defendant's Demurrer to
5 Plaintiff's Complaint with leave to amend for the underlying claims numbers 1, 4, 5 and 7, and
6 overruled Defendant's Demurrer as to the underlying claims numbers 2, 3, 6, 8, and 9;

7 WHEREAS, on November 12, 2021, Plaintiff filed a First Amended Complaint
8 ("FAC") which alleges one cause of action against Defendant, for violation of California Labor
9 Code § 2698, *et seq.* pursuant to PAGA, for the following underlying claims: (1) violation of
10 California Labor Code §§ 226.7 and 512(a) (unpaid meal period premiums); (2) violation of
11 California Labor Code § 226.7 (unpaid rest period premiums); (3) violation of California Labor
12 Code § 204 (wages not timely paid during employment); (4) violation of California Labor Code
13 § 1174(d) (failure to keep requisite payroll records); (5) violation of California Labor Code §§
14 2800 and 2802 (unreimbursed business expenses);

15 WHEREAS, on November 19, 2021, the Parties scheduled private mediation with
16 Justice Steven M. Vartabedian (Ret.) for April 18, 2022;

17 WHEREAS, on December 9, 2021, Plaintiff served written discovery tailored to the
18 FAC on Defendant, which included, Form Interrogatories – General (Set One), Request for
19 Production of Documents (Set One), Special Interrogatories (Sets One, Two);

20 WHEREAS, after meeting and conferring, in order to focus all efforts and costs towards
21 mediation, on December 14, 2021, the Parties agreed to a mutual stay on formal discovery
22 pending mediation, and to allow informal discovery for mediation purposes;

23 WHEREAS, on January 24, 2022, the Parties filed a Joint Stipulation to Continue Trial
24 Date and Related Pre-Trial Deadlines, based on the Parties' agreement to attend private
25 mediation approximately fifty (50) days before Jury Trial, and the corresponding agreement to a
26 mutual stay on formal discovery pending mediation;

27 WHEREAS, on January 25, 2022, the Court denied the Parties' Joint Stipulation to
28 Continue Trial Date and Related Pre-Trial Deadlines;

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1 WHEREAS, on February 1, 2022, the Court held a Hearing on Plaintiff's Motion to
2 Continue Trial Date, in which the Court explained to the Parties that the Joint Stipulation to
3 Continue Trial Date and Related Pre-Trial Deadlines was denied because the case has not been
4 deemed complex and therefore must proceed with the current Jury Trial schedule. The Court
5 also explained that if the Parties agreed that the case should be deemed complex, a Joint
6 Stipulation could be filed to deem the matter complex and a request for a continuance of the
7 Jury Trial and all trial related deadlines could be made;

8 WHEREAS, counsel for Plaintiff and Defendant have met and conferred and agreed that
9 this action should be designated complex pursuant to California Rules of Court Rules 3.400,
10 3.402 (c) and 3.403(b);

11 WHEREAS, the Parties agree that this action satisfies multiple factors set forth for a
12 complex designation pursuant to California Rules of Court Rule 3.400, and that such a
13 designation will "avoid placing unnecessary burdens on the court or the litigants and to expedite
14 the case, keep costs reasonable, and promote effective decision making by the court, the parties,
15 and counsel." Cal. R. Ct. 3400(a); specifically, pursuant to Cal. R. Ct. 3400(b)(1)-(2), the instant
16 action will involve "[n]umerous pretrial motions raising difficult or novel legal issues that will be
17 time-consuming to resolve," including motions pertaining to anticipated discovery disputes, as
18 well as the "[m]anagement of a large number of witnesses or a substantial amount of
19 documentary evidence," including the deposition of large numbers of percipient witnesses such
20 as Defendant's current and former employees, their supervisors, its executive staff, and others, in
21 addition to information and documents related to, *inter alia*, the contact information of aggrieved
22 employees, time and wage statements of aggrieved employees, and Defendant's policies,
23 practices, and procedures relating to, *inter alia*, meal and rest periods, payment of wages, and
24 reimbursement of business expenses;

25 WHEREAS, the Parties wish to continue the Jury Trial date and all trial related
26 deadlines in this action based on the complex nature of the matter which will require
27 "exceptional judicial management"; a continuance will provide the Parties the opportunity to
28 engage in an informal discovery conferences if necessary, file motions to compel if necessary,

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Glendale, California 91203

1 obtain documents, information, and deposition testimony from multiple witnesses necessary to
2 prepare for Trial, analyze and assess records, should the private mediation scheduled for April
3 18, 2022 not resolve the claims presently at issue;

4 **THEREFORE, IT IS HEREBY STIPULATED AND AGREED BY THE PARTIES**
5 **HERETO, THROUGH THEIR RESPECTIVE COUNSEL, AS FOLLOWS:**

6 1. The Settlement Conference currently scheduled for May 19, 2022 at 8:30 a.m. is
7 continued to a date convenient for the Court.

8 2. All Other Trial Related Deadlines, including the Deadline to Lodge all
9 Documents currently scheduled for May 31, 2022, is continued to a date convenient for the
10 Court.

11 3. The Trial Readiness Conference currently scheduled for June 3, 2022 at 8:30
12 a.m. is continued to a date convenient for the Court

13 4. The Jury Trial currently scheduled for June 6, 2022 at 9:00 a.m. is continued to a
14 date convenient for the Court

15 5. All trial related deadlines (i.e., discovery cut off, excerpt cut off dates, etc.) are
16 hereby continued in accordance with the new trial date.

17 **IT IS SO STIPULATED.**

18 Date: February 23, 2022

LAWYERS for JUSTICE, PC

19
20 By: 

Travis J. Maher
Attorneys for Plaintiff

21
22 **Filed By Fax**

23
24 Date: February 23, 2022

RAIMONDO & ASSOCIATES

25
26 By: 

Kevin B. Piercy
Attorneys for Plaintiff

27
28 **Filed By Fax**

[PROPOSED] ORDER

The Court, having reviewed the Parties' Joint Stipulation to Continue Trial Date and Related Pre-Trial Deadlines, and good cause appearing, orders as follows:

1. The Parties' stipulation is approved.
2. The case is deemed complex.
3. The Settlement Conference is continued to 3/23/23.
4. All Other Trial Related Deadlines are continued to _____.
5. The Trial Readiness Conference is continued to 4/7/23.
6. The Jury Trial is continued to 4/10/23.
7. All trial related deadlines (i.e., discovery cut off, expert cut off dates, etc.) are

hereby continued in accordance with the new trial date.

IT IS SO ORDERED.

Dated: 02/25/2022

By: 
Judge of the Tulare County Superior Court

LAWYERS for JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 410 West Arden Avenue, Suite 203, Glendale, California 91203.

On February 24, 2022, I served the foregoing document(s) described as: **JOINT STIPULATION TO DEEM CASE COMPLEX AND CONTINUE TRIAL DATE AND RELATED PRE-TRIAL DEADLINES** on interested parties in this action by Electronic Service as follows:

Kevin Barnes Piercy – kbp@raimondoassociates.com

James D. Miller – jdm@raimondoassociates.com

Mark E. Haywood (Paralegal) – meh@raimondoassociates.com

RAIMONDO & ASSOCIATES, a Law Corporation

7110 N. Marks Avenue, Suite 104

Fresno, California 93711

Mailing Address: P.O. Box 28100, Fresno, CA 93729

Attorneys for Defendant Setton Pistachio of Terra Bella, Inc.

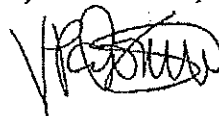
[X] BY E-MAIL PURSUANT TO ELECTRONIC SERVICE AGREEMENT

Pursuant to agreement between the parties to use electronic service in this matter, the above-referenced document(s) was transmitted to the person(s) at the e-mail address(es) listed herein at their most recent known e-mail address or e-mail of record in this action. I did not receive, within reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

[X] STATE

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on February 24, 2022, at Glendale, California.



Valerie Palomo

Filed By Fax

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 410 West Arden Avenue, Suite 203, Glendale, California 91203.

On March 3, 2022, I served the foregoing document(s) described as: **NOTICE OF ENTRY OF JUDGMENT OR ORDER** on interested parties in this action by Electronic Service as follows:

Kevin Barnes Piercy – kbp@raimondoassociates.com

James D. Miller – jdm@raimondoassociates.com

Mark E. Haywood (Paralegal) – meh@raimondoassociates.com

RAIMONDO & ASSOCIATES, a Law Corporation

7110 N. Marks Avenue, Suite 104

Fresno, California 93711

Mailing Address: P.O. Box 28100, Fresno, CA 93729

Attorneys for Defendant Setton Pistachio of Terra Bella, Inc.

[X] BY E-MAIL PURSUANT TO ELECTRONIC SERVICE AGREEMENT

Pursuant to agreement between the parties to use electronic service in this matter, the above-referenced document(s) was transmitted to the person(s) at the e-mail address(es) listed herein at their most recent known e-mail address or e-mail of record in this action. I did not receive, within reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

[X] STATE

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on March 3, 2022, at Glendale, California.



Valerie Palomo

LAWYERS for JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is Raimondo | Miller, ALC, 7110 North Marks Avenue, Suite 104, Fresno, California 93711. My business mailing address is Raimondo | Miller, ALC, P.O. Box 28100, Fresno, California 93729. On May 18, 2022, I served the within documents:

• **NOTICE OF REMOVAL TO FEDERAL COURT BY DEFENDANT SETTON PISTACHIO OF TERRA BELLA, INC.**

☒ **BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the person(s) at the address(es) set forth below. I placed the envelope for collection and mailing following ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Fresno, California.

☒ **BY ELECTRONIC SUBMISSION:** Based on a court order or an agreement of the parties to accept electronic service, I caused the document(s) to be sent to the person(s) at the electronic service address(es) listed below.

Edwin Aiwazian, Esq. LAWYERS FOR JUSTICE, PC 410 West Arden Avenue, Suite 203 Glendale, CA 91203 TEL: 818-265-1020 FAX: 818-265-1021 e-service@calljustice.com	
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Attorneys for Plaintiff,
JUSTIN HESTER

I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California and the Federal Government that the above is true and correct.

Executed on May 18, 2022, at Fresno, California.


Jason Dunbar